

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 274

**Introduced by Senator Leno
(Coauthor: Senator Beall)**

February 14, 2013

An act to amend ~~Section 4057 of~~ *Sections 3040, 4057, 7601, 7612, and 8617 of*, and to add *Section 4052.5* to, the Family Code, relating to ~~child support~~ *family law*.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as amended, Leno. ~~Child support: statewide uniform guideline.~~ *Family law: parentage: child custody and support.*

~~Under existing law, the parents of a minor child are responsible for supporting the child. Existing law establishes the statewide uniform guideline for calculating court-ordered child support, which is rebuttably presumed to be the correct amount of child support. Existing law provides that the presumption may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate because of one or more factors found to be applicable and the court provides certain information in writing, as specified.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

(1) Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother, except as specified. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law further provides that a man is rebuttably presumed to be the father if he was married to, or attempted to marry, the mother before or after

the birth of the child, or he receives the child as his own and openly holds the child out as his own. Under existing law, the latter presumptions are rebutted by a judgment establishing paternity by another man.

This bill would authorize a court to find that more than 2 persons with a claim to parentage, as specified, are parents if the court finds that recognizing only 2 parents would be detrimental to the child. The bill would direct the court, in making this determination, to consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time.

(2) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship.

This bill would provide that a child may have a parent and child relationship with more than 2 parents. The bill would require any reference to 2 parents to be interpreted to apply to all of a child's parents where a child is found to have more than 2 parents, as specified.

(3) Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including the health, safety, and welfare of the child. Existing law establishes an order of preference for allocating child custody and directs the court to choose a parenting plan that is in the child's best interest.

This bill would, in the case of a child with more than 2 parents, require the court to allocate custody and visitation among the parents based on the best interest of the child, as specified.

(4) Under existing law, the parents of a minor child are responsible for supporting the child. Existing law establishes the statewide uniform guideline for calculating court-ordered child support, which is rebuttably presumed to be the correct amount of child support. Existing law provides that the presumption may be rebutted by admissible evidence showing that application of the uniform guideline would be

unjust or inappropriate because of one or more factors found to be applicable and the court provides certain information in writing, as specified.

This bill would direct the court to apply the statewide uniform guideline in a case where a child has more than 2 parents by dividing the child support obligations among the parents based on the income of each of the parents and the amount of time spent with the child by each parent. The bill would require the court to divide child support obligations among the parents in a just and appropriate manner, as specified, if the court finds that applying the statewide uniform guideline to a child with more than 2 parents would be unjust and inappropriate, as specified.

(5) Under existing law, the birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

This bill would provide that the termination of the parental duties and responsibility of the parent or parents may be waived by agreement of the parent or parents and the prospective adoptive parent.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Most children have two parents, but in rare cases, children*
4 *have more than two people who are that child's parent in every*
5 *way. Separating a child from a parent has a devastating*
6 *psychological and emotional impact on the child, and courts must*
7 *have the power to protect children from this harm.*

8 *(b) The purpose of this bill is to abrogate In re M.C. (2011) 195*
9 *Cal.App.4th 197 insofar as it held that where there are more than*
10 *two people who have a claim to parentage under the Uniform*
11 *Parentage Act, courts are prohibited from recognizing more than*
12 *two of these people as the parents of a child, regardless of the*
13 *circumstances.*

14 *(c) This bill does not change any of the requirements for*
15 *establishing a claim to parentage under the Uniform Parentage*
16 *Act. It only clarifies that where more than two people have claims*

1 *to parentage, the court may, if it would otherwise be detrimental*
2 *to the child, recognize that the child has more than two parents.*

3 *(d) It is the intent of the Legislature that this bill will only apply*
4 *in the rare case where a child truly has more than two parents,*
5 *and a finding that a child has more than two parents is necessary*
6 *to protect the child from the detriment of being separated from*
7 *one of his or her parents.*

8 *SEC. 2. Section 3040 of the Family Code is amended to read:*

9 3040. (a) Custody should be granted in the following order of
10 preference according to the best interest of the child as provided
11 in Sections 3011 and 3020:

12 (1) To both parents jointly pursuant to Chapter 4 (commencing
13 with Section 3080) or to either parent. In making an order granting
14 custody to either parent, the court shall consider, among other
15 factors, which parent is more likely to allow the child frequent and
16 continuing contact with the noncustodial parent, consistent with
17 Sections 3011 and 3020, and shall not prefer a parent as custodian
18 because of ~~the gender of that parent's sex~~ *parent*. The court, in its
19 discretion, may require the parents to submit to the court a plan
20 for the implementation of the custody order.

21 (2) If to neither parent, to the person or persons in whose home
22 the child has been living in a wholesome and stable environment.

23 (3) To any other person or persons deemed by the court to be
24 suitable and able to provide adequate and proper care and guidance
25 for the child.

26 (b) The immigration status of a parent, legal guardian, or relative
27 shall not disqualify the parent, legal guardian, or relative from
28 receiving custody under subdivision (a).

29 (c) This section establishes neither a preference nor a
30 presumption for or against joint legal custody, joint physical
31 custody, or sole custody, but allows the court and the family the
32 widest discretion to choose a parenting plan that is in the best
33 interest of the child.

34 *(d) In cases where a child has more than two parents, the court*
35 *shall allocate custody and visitation among the parents based on*
36 *the best interest of the child, including, but not limited to,*
37 *addressing the child's need for continuity and stability by*
38 *preserving established patterns of care and emotional bonds. The*
39 *court may order that not all parents share legal or physical custody*

1 *of the child if the court finds that it would not be in the best interest*
2 *of the child as provided in Sections 3011 and 3020.*

3 *SEC. 3. Section 4052.5 is added to the Family Code, to read:*

4 *4052.5. (a) The statewide uniform guideline, as required by*
5 *federal regulations, shall apply in any case in which a child has*
6 *more than two parents. The court shall apply the guideline by*
7 *dividing child support obligations among the parents based on*
8 *income and amount of time spent with the child by each parent,*
9 *pursuant to Section 4053.*

10 *(b) Consistent with federal regulations, after calculating the*
11 *amount of support owed by each parent under the guideline, the*
12 *presumption that the guideline amount of support is correct may*
13 *be rebutted if the court finds that the application of the guideline*
14 *in that case would be unjust or inappropriate due to special*
15 *circumstances, pursuant to Section 4057. If the court makes that*
16 *finding, the court shall divide child support obligations among the*
17 *parents in a manner that is just and appropriate based on income*
18 *and amount of time spent with the child by each parent, applying*
19 *the principles set forth in Section 4053 and this article.*

20 **SECTION 1.**

21 *SEC. 4. Section 4057 of the Family Code is amended to read:*

22 *4057. (a) The amount of child support established by the*
23 *formula provided in subdivision (a) of Section 4055 is presumed*
24 *to be the correct amount of child support to be ordered.*

25 *(b) The presumption of subdivision (a) is a rebuttable*
26 *presumption affecting the burden of proof and may be rebutted by*
27 *admissible evidence showing that application of the formula would*
28 *be unjust or inappropriate in the particular case, consistent with*
29 *the principles set forth in Section 4053, because one or more of*
30 *the following factors is found to be applicable by a preponderance*
31 *of the evidence, and the court states in writing or on the record the*
32 *information required in subdivision (a) of Section 4056:*

33 *(1) The parties have stipulated to a different amount of child*
34 *support under subdivision (a) of Section 4065.*

35 *(2) The sale of the family residence is deferred pursuant to*
36 *Chapter 8 (commencing with Section 3800) of Part 1 and the rental*
37 *value of the family residence where the children reside exceeds*
38 *the mortgage payments, homeowner's insurance, and property*
39 *taxes. The amount of any adjustment pursuant to this paragraph*
40 *shall not be greater than the excess amount.*

1 (3) The parent being ordered to pay child support has an
2 extraordinarily high income and the amount determined under the
3 formula would exceed the needs of the children.

4 (4) A party is not contributing to the needs of the children at a
5 level commensurate with that party's custodial time.

6 (5) Application of the formula would be unjust or inappropriate
7 due to special circumstances in the particular case. These special
8 circumstances include, but are not limited to, the following:

9 (A) Cases in which the parents have different time-sharing
10 arrangements for different children.

11 (B) Cases in which both parents have substantially equal
12 time-sharing of the children and one parent has a much lower or
13 higher percentage of income used for housing than the other parent.

14 (C) Cases in which the children have special medical or other
15 needs that could require child support that would be greater than
16 the formula amount.

17 (D) *Cases in which a child is found to have more than two*
18 *parents.*

19 SEC. 5. Section 7601 of the Family Code is amended to read:

20 7601. (a) "Parent and child relationship" as used in this part
21 means the legal relationship existing between a child and the child's
22 natural or adoptive parents incident to which the law confers or
23 imposes rights, privileges, duties, and obligations. The term
24 includes the mother and child relationship and the father and child
25 relationship.

26 (b) *This part does not preclude a finding that a child has a*
27 *parent and child relationship with more than two parents.*

28 (c) *For purposes of state law, administrative regulations, court*
29 *rules, government policies, common law, and any other provision*
30 *or source of law governing the rights, protections, benefits,*
31 *responsibilities, obligations, and duties of parents, any reference*
32 *to two parents shall be interpreted to apply to every parent of a*
33 *child where that child has been found to have more than two*
34 *parents under this part.*

35 SEC. 6. Section 7612 of the Family Code is amended to read:

36 7612. (a) Except as provided in Chapter 1 (commencing with
37 Section 7540) and Chapter 3 (commencing with Section 7570) of
38 Part 2 or in Section 20102, a presumption under Section 7611 is
39 a rebuttable presumption affecting the burden of proof and may

1 be rebutted in an appropriate action only by clear and convincing
2 evidence.

3 (b) If two or more presumptions arise under Section 7610 or
4 7611 that conflict with each other, or if a presumption under
5 Section 7611 conflicts with a claim pursuant to Section 7610, the
6 presumption which on the facts is founded on the weightier
7 considerations of policy and logic controls.

8 (c) *In an appropriate action, a court may find that more than*
9 *two persons with a claim to parentage under this division are*
10 *parents if the court finds that recognizing only two parents would*
11 *be detrimental to the child. In determining detriment to the child,*
12 *the court shall consider all relevant factors, including, but not*
13 *limited to, the harm of removing the child from a stable placement*
14 *with a parent who has fulfilled the child's physical needs and the*
15 *child's psychological needs for care and affection, and who has*
16 *assumed that role for a substantial period of time. A finding of*
17 *detriment to the child does not require a finding of unfitness of*
18 *any of the parents or persons with a claim to parentage.*

19 ~~(e) The~~

20 (d) *Unless a court orders otherwise after making the*
21 *determination specified in subdivision (c), a presumption under*
22 *Section 7611 is rebutted by a judgment establishing paternity of*
23 *the child by another man.*

24 ~~(d)~~

25 (e) Within two years of the execution of a voluntary declaration
26 of paternity, a person who is presumed to be a parent under Section
27 7611 may file a petition pursuant to Section 7630 to set aside a
28 voluntary declaration of paternity. The court's ruling on the petition
29 to set aside the voluntary declaration of paternity shall be made
30 taking into account the validity of the voluntary declaration of
31 paternity, and the best interests of the child based upon the court's
32 consideration of the factors set forth in subdivision (b) of Section
33 7575, as well as the best interests of the child based upon the
34 nature, duration, and quality of the petitioning party's relationship
35 with the child and the benefit or detriment to the child of continuing
36 that relationship. In the event of any conflict between the
37 presumption under Section 7611 and the voluntary declaration of
38 paternity, the weightier considerations of policy and logic shall
39 control.

40 ~~(e)~~

1 (f) A voluntary declaration of paternity is invalid if, at the time
2 the declaration was signed, any of the following conditions exist:

3 (1) The child already had a presumed parent under Section 7540.

4 (2) The child already had a presumed parent under subdivision
5 (a), (b), or (c) of Section 7611.

6 (3) The man signing the declaration is a sperm donor, consistent
7 with subdivision (b) of Section 7613.

8 *SEC. 7. Section 8617 of the Family Code is amended to read:*

9 ~~8617. The birth-~~*(a) Except as provided in subdivision (b), the*
10 *existing parent or parents of an adopted child are, from the time*
11 *of the adoption, relieved of all parental duties towards, and all*
12 *responsibility for, the adopted child, and have no right over the*
13 *child.*

14 *(b) The termination of the parental duties and responsibilities*
15 *of the existing parent or parents under subdivision (a) may be*
16 *waived by agreement of the existing parent or parents and the*
17 *prospective adoptive parents.*